

STATE OF MICHIGAN
COURT OF APPEALS

GONZALEZ INTEGRATED MARKETING, f/k/a
LAKELAND GRAPHICS SERVICES, INC.,

UNPUBLISHED
April 12, 2005

Plaintiff/Counterdefendant-
Appellee,

v

WALTER R. OLTERS DORF,

No. 251151
Wayne Circuit Court
LC No. 02-233037-CK

Defendant/Counterplaintiff-
Appellant.

Before: Donofrio, P.J., and Murphy and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order denying his motion for summary disposition and granting summary disposition to plaintiff of specific performance resulting in a conveyance of real property by judgment. The parties entered into a lease of real property that contained an option to purchase the property at the conclusion of the lease. Because plaintiff failed to satisfy the conditions precedent to the exercising of the option, we reverse.

The parties entered into a lease of real property that contained among its provisions three terms and an option to purchase at the conclusion of the lease that are germane to our determination of this appeal. Defendant conditioned the exercising of the option "upon the faithful performance by the Tenant of all covenants, conditions and agreements required to be performed by it as Tenant under this Lease" Defendant contends that plaintiff violated the "Rent and Rental of Premises" (payment terms), "Use and Occupancy" (a color separation and printing business), and the "Repairs and Alterations" (no alterations or improvements without defendant's written consent) provisions. It is plaintiff's attempt to exercise the option to purchase and the trial court's finding of plaintiff's faithful performance of the provisions of the lease resulting in a conveyance of the property by judgment to plaintiff that drives this appeal.

We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Willis v Deerfield Twp*, 257 Mich App 541, 548; 669 NW2d 279 (2003). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the nonmoving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion under subrule (C)(10), a court considers all the evidence,

affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id.* at 30-31. The nonmoving party must present more than mere allegations to establish a genuine issue of material fact for resolution at trial. *Id.* at 31.

In addition, the proper interpretation of a contract is a question of law which this Court reviews de novo. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003); *Grand Trunk Western Railroad, Inc v Auto Warehousing Co*, 262 Mich App 345, 350; 686 NW2d 756 (2004). In interpreting a contract, our obligation is to determine the intent of the parties. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003); *J & J Farmer Leasing, Inc v Citizens Ins Co of America*, 260 Mich App 607, 612; 680 NW2d 423 (2004). We must examine the language of the contract and accord words their ordinary and plain meanings if such meanings are apparent. *Wilkie, supra* at 47. If the language is unambiguous, courts must interpret and enforce the contract as written. *Quality Products, supra* at 375; *J & J Farmer, supra* at 613. “Thus, an unambiguous contractual provision is reflective of the parties’ intent as a matter of law.” *Quality Products, supra* at 375.

Defendant contends that plaintiff violated various provisions of the lease agreement. First, defendant argues that plaintiff failed to pay rent in accordance with the agreement. It is undisputed that plaintiff did not timely pay its monthly rental obligation. Indeed, the payment chart that plaintiff compiled shows that, of the first sixty payments, only two were timely made. Thus, plaintiff violated the rent provisions.

Defendant next contends that plaintiff violated the “Use and Occupancy” provision. It is undisputed that the premises has not been used “for the business of color separation, printing and other related services” as contained in the agreement since November 2002. Thereafter, the building was used for rack repair and refurbishing work. Because the lease required that the premises “shall” be used for color separation and printing, plaintiff violated this provision by performing other work and services on the property. Plaintiff incorrectly argues that the only prohibition on use and occupancy is that the property not be used for illegal purposes. The word “shall,” however, mandates that the property be used for “color separation, printing, and other related services.” The sentence that follows merely limits such services to those which are not contrary to law. Because plaintiff used the premises for operations other than printing and color separation, plaintiff violated this provision.

Defendant next asserts that plaintiff violated the “Repairs and Alterations” provision of the agreement which required defendant’s written consent before plaintiff altered the premises by making three large holes in the walls of the building. It is undisputed that plaintiff altered the walls to create one continuous space with his own adjoining building. It is also undisputed that plaintiff did not obtain defendant’s written consent before making the alterations. Thus, plaintiff violated the express terms of the repair and alterations clause of the lease.

While the lease agreement provided that plaintiff could purchase the property if it faithfully performed “all covenants, conditions and agreements required to be performed,” the trial court erroneously determined that plaintiff satisfied this provision. As outlined above, plaintiff violated the agreement by repeatedly failing to timely pay rent, making unauthorized alterations to the premises, and using the premises for purposes other than those described and required in the agreement. Because the right to exercise the option to purchase was conditioned upon the faithful performance of *all* conditions, covenants, and agreements under the lease, and

plaintiff did not faithfully perform all the requirements, plaintiff was not entitled to exercise the option to purchase the property.

The trial court determined that defendant's continued acceptance of the lease payments, even after notifying plaintiff that the lease was terminated, indicated a willingness to continue the relationship with plaintiff under the terms of the lease agreement. Notwithstanding the provisions pertaining to the payment of rent, however, plaintiff violated the agreement by making unauthorized alterations to the premises and by using the premises for purposes other than those specifically delineated in the agreement. These agreement violations alone allowed defendant "at his option" to terminate the lease and repossess the premises. Though defendant accepted all of plaintiff's rent payments, defendant was nevertheless justified under the terms of the purchase option provision to deny plaintiff the option to purchase the property. An option is a mere offer, the acceptance of which must be made within the time allowed and in minute compliance with its terms or the optionee's rights will be lost. *LeBaron Homes, Inc v Pontiac Housing Fund, Inc*, 319 Mich 310, 315; 29 NW2d 704 (1947). Substantial compliance with the terms of an option is insufficient. *Id.* An option vests when the conditions and procedures specified in a contract are complied with in such a manner as to give rise to an immediate right on behalf of the lessee to exercise the option. *Amoco Oil Co v Kraft*, 89 Mich App 270, 275 n 3; 280 NW2d 505 (1979). Because plaintiff did not minutely comply with the conditions precedent articulated in the lease agreement, the option to purchase did not vest and was thereby lost. Although this result may seem inequitable, the contractual language is unambiguous, and this Court must interpret and enforce the contract as written. *Quality Products, supra* at 375; *J & J Farmer, supra* at 613. Courts will not rewrite contracts absent some highly unusual circumstance such as a contract that violates the law or public policy. *Quality Products, supra* at 370; *Wilkie, supra* at 51.

Plaintiff incorrectly argues that the agreement is a land contract rather than a lease with a purchase option and that *LeBaron Homes* does not apply because of the mutuality of obligation between the parties in this case. The distinction between a lease with an option and a land contract is that, in the latter, the seller is obligated to sell and the buyer is obligated to buy, thus both parties are bound. *LeBaron Homes, supra* at 315; *Grasman v Jelsema*, 70 Mich App 745, 751; 246 NW2d 322 (1976). Where the purchaser is not obligated to buy, however, the agreement is considered an option rather than a land contract. *Id.* Plaintiff was not obligated to purchase the property at issue in this case, and defendant's obligation to sell was conditioned on plaintiff's compliance with the specific terms of the agreement. The agreement was an option rather than a land contract. As in *LeBaron Homes*, plaintiff's failure to comply with the terms of the option precludes a finding that it is entitled to specific performance of the option. *LeBaron Homes, supra* at 316.

Reversed and remanded for entry of a judgment in favor of defendant. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ Stephen L. Borrello